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AMENDING THE CIVIL SERVICE RETIREMENT ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON RETIREMENT

OF THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 158, H.R. 969, and H.R. 1746

FEBRUARY 18, 1966

Printed for the use of the
Committee on Post Office and Civil Service

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1966

59-463

Approved For Release 2005/06/06 : CIA-RDP75B00380R000700130003-2

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AMENDING CIVIL SERVICE RETIREMENT ACT

FRIDAY, FEBRUARY 18, 1966

U.S. SENATE,
RETIREMENT SUBCOMMITTEE OF THE COMMITTEE
ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 6202, New Senate Office Building, Hon. Gale W. McGee presiding.

Present: Senators McGee and Boggs.

Also present: David Minton, general counsel; Frank Paschal, LeGrand A. Rouse II, and Hugh B. Key II, professional staff members.

Senator MCGEE. The Subcommittee on Retirement will come to order.

This hearing is convened to hear testimony on three bills which have been passed by the House of Representatives and are pending before this Subcommittee on Retirement. I think all of these measures can be generally described as "housekeeping" in nature, in order to correct certain administrative problems which have arisen because of the language of present law.

H.R. 158 would permit the government of the District of Columbia to make counterclaims against funds on deposit in the civil service retirement and disability fund which belong to former employees of the District government, or of the Federal Government.

H.R. 969 would extend certain retirement benefits to reemployed annuitants whose final separation occurred during a period of several months in the years 1960 and 1961.

H.R. 1746 would define the word "child" so that any natural child of a deceased Federal employee would have an equal right to share in a lump-sum settlement from the retirement fund as does a legitimate child of the deceased employee.

(The bills referred to follow:)

[H.R. 158, 89th Cong., 1st sess.]

AN ACT To amend the Civil Service Retirement Act to permit the recovery by the Government of amounts due the Government in the settlement of claims under such Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Civil Service Retirement Act, as amended (5 U.S.C. 2265), is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding any other provision of law, the Commission is authorized to take appropriate action on counterclaims filed by the Government as set off against amounts otherwise due and payable from the fund to the debtors concerned."

Passed the House of Representatives February 10, 1965.

RALPH R. ROBERTS, *Clerk.*

Attest:

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[H.R. 969, 89th Cong., 1st sess.]

AN ACT To authorize redetermination under the Civil Service Retirement Act of annuities of certain reemployed annuitants

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last sentence of section 13(b) of the Civil Service Retirement Act, 5 U.S.C. 2263(b), is amended to read as follows: "Notwithstanding the restriction contained in section 115 of the Social Security Amendments of 1954, Public Law 83–761, a similar right to redetermination after deposit shall be applicable to an annuitant (1) whose annuity is based on an involuntary separation from the service and (2) who is separated on or after July 12, 1960, after such period of full-time reemployment which began before October 1, 1956."

SEC. 2. Notwithstanding any other provision of law, annuity benefits resulting from enactment of this Act shall be paid from the civil service retirement and disability fund.

Passed the House of Representatives October 5, 1965.

Attest: RALPH R. ROBERTS, *Clerk.*

[H.R. 1746, 89th Cong., 1st sess.]

AN ACT To define the term "child" for lump-sum payment purposes under the Civil Service Retirement Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1(j) of the Civil Service Retirement Act (5 U.S.C. 2251(j)) is amended by adding at the end thereof the following sentence: "The term 'child', for purposes of section 11, shall include an adopted child and a natural child, but shall not include a stepchild".

SEC. 2. The provisions under the heading "Civil Service Retirement and Disability Fund" in title I of the Independent Offices Appropriation Act, 1959 (72 Stat. 1064; Public Law 85–844), shall not apply with respect to benefits resulting from the enactment of this Act.

Passed the House of Representatives February 10, 1965.

Attest:

RALPH R. ROBERTS, *Clerk.*

I think it would expedite matters if each of our witnesses would present his testimony on all three bills at one time, and give the subcommittee an opportunity to question the witnesses on all the bills at the same time.

I wish to announce that the ranking member of this subcommittee, Senator Ralph W. Yarborough, is necessarily absent this morning in order to attend the funeral of our distinguished colleague in the House of Representatives, Congressman Albert Thomas, of Texas.

Our first witness this morning is Mr. Andrew E. Ruddock, Director of the Bureau of Retirement and Insurance, U.S. Civil Service Commission.

Would you come forward? You may proceed in any way you see fit.

STATEMENT OF ANDREW E. RUDDOCK, DIRECTOR, BUREAU OF RETIREMENT AND INSURANCE, U.S. CIVIL SERVICE COMMISSION

Mr. RUDDOCK. Thank you, Mr. Chairman and members of the committee. I appreciate this opportunity to appear before you today, on behalf of the Civil Service Commission, in support of H.R. 158, H.R. 969, and H.R. 1746. With your permission, Mr. Chairman, I would like to briefly discuss all three of these measures—taking them in numerical sequence.

The first bill, H.R. 158, is the result of a District of Columbia government proposal to amend the Civil Service Retirement Act to allow setoff against amounts due from the retirement fund to cover an indebtedness due the District of Columbia government.

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The original bill was amended, prior to House passage on February 10, 1965, to clearly spell out the Federal Government's long-established right to effect setoff. Authorizing setoff action on claims filed by the "Government," as defined in the Retirement Act, provides the recovery right not only for the District government, but also for Federal agencies, Government owned or controlled corporations, and federally supported Gallaudet College.

The Commission's report to the chairman of the full committee on this bill, dated March 1, 1965, sets forth our official position on this legislative proposal. I suggest that this report be made a part of the record of this hearing.

Senator McGEE. Without objection.

(The document to be furnished follows:)

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., March 1, 1965.

Hon. OLIN D. JOHNSTON,
Chairman, Committee on Post Office and Civil Service,
U.S. Senate.

DEAR MR. CHAIRMAN: This refers to your request of February 22, 1965, for Commission report on H.R. 158, a bill to amend the Civil Service Retirement Act to permit the recovery by the Government of amounts due the Government in the settlement of claims under such act, and for other purposes.

A long line of decisions by the Comptroller General of the United States establishes existing procedure whereby money due from the retirement fund may be used to satisfy an indebtedness to the United States in the case. The right of the Government to apply retirement money to satisfy an indebtedness has been upheld by (1) the U.S. Circuit Court of Appeals for the Second Circuit on February 4, 1941, in the case of *Edward E. Boerner* v. *United States* (117 Fed. 2d 387), (2) the U.S. District Court for the Southern Division of the Northern District of Alabama on June 24, 1943, in the case of *Bryan Watson* v. *United States*, and (3) the U.S. District Court for the Southern District of New York on May 13, 1944, in the case of *Emilio Marrero* v. *United States*.

This procedure is not applicable as regards an indebtedness to the municipal government of the District of Columbia, as noted in Comptroller General's decision dated December 6, 1956 (36 Comp. Gen. 457), based materially on opinion of the U.S. District Court for the District of Columbia, filed December 15, 1955, in the case of *Sedgwick* v. *Young*, Civil Action No. 917–55.

H.R. 158, if enacted, would amend the Civil Service Retirement Act to authorize setoff, against annuity or refund otherwise payable thereunder, to satisfy a District of Columbia indebtedness owed by either a former District employee or a former Federal employee.

While the Commission dislikes being in the position of a collection agency, no reason is apparent why the District government as a creditor should not be on a par with Federal establishments.

It is believed also that for purposes of clarity and completeness the statutory amendment may as well spell out, as it does, the Federal Government's established right to effect setoff. Authorizing setoff action on claims filed by the "Government," as defined in the Retirement Act, provides the recovery right not only for the District government, but also for Federal agencies, Government-owned or controlled corporations, and federally supported Gallaudet College.

The Commission offers no objection to the enactment of H.R. 158.

In connection with our report to the House Committee on Post Office and Civil Service on this bill, the Bureau of the Budget advised that there would be no objection to the submission of this report to the committee.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

Mr. RUDDOCK. The Civil Service Commission has no objection to the enactment of this legislation. As a matter of fact, for about 35 years, from 1920 to 1955, we did make setoffs from retirement funds to recover amounts of indebtedness to the District of Columbia government.

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But, in 1956, the Comptroller General rendered a decision, based materially on the December 15, 1955, opinion of the U.S. District Court for the District of Columbia in the case of *Sedgwick* v. *Young*, holding that it was not appropriate to make setoffs to recover indebtedness to the District of Columbia government.

While the Commission has never particularly liked being in the position of a collection agency, we see no reason why the District government as a creditor should not be on a par with Federal establishments. Enactment of this legislation would merely reactivate the practice which prevailed from 1920 until 1955. I urge your favorable consideration of this legislation.

The second bill, H.R. 969, is intended to benefit a limited number of involuntarily separated retirees who were reemployed before October 1, 1956, and who are ineligible for any redetermination of annuity because they were separated from continuous full-time reemployment service prior to the Retirement Act Amendment of October 4, 1961. I suggest, at this point, that the Commission's letter of November 5, 1965, to the chairman of the full committee on H.R. 969 be made a part of the record of the subcommittee's proceedings.

Senator MCGEE. That will be made a part of the record without objection.

(The document referred to follows:)

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., November 5, 1965.

Hon. A. S. MIKE MONRONEY,
Chairman, Committee on Post Office and Civil Service,
U.S. Senate.

DEAR MR. CHAIRMAN: This refers further to your request for Commission report on H.R. 969, a bill to authorize redetermination under the Civil Service Retirement Act of annuities of certain reemployed annuitants.

H.R. 969, as passed by the House of Representatives October 5, 1965, would expand the application of an October 4, 1961, amendment to the Retirement Act to cover a few additional cases of retirees who were reemployed in the Government before October 1, 1956, and whose rights as a result of such reemployment are still governed by the retirement law in effect before that date. The retirement law before October 1, 1956, provided that an annuitant aged 60 or over who reentered the Federal service did so under the following conditions:

1. Annuity payments continued.
2. No retirement fund deductions could be withheld, but salary was reduced by the annuity allocable to the period of actual employment.
3. Annuity could "not be redetermined upon such person's subsequent separation from the service."

The 1956 Retirement Act modified the situation for most reemployed annuitants by adding a provision under which a reemployed retiree serving continuously on a full-time basis for at least a year became entitled, upon separation, to a supplemental annuity amount computed on his period of reemployment service. Later, by the act of July 12, 1960, a further amendment was inserted whereby the reemployed annuitant separating (on or after that date) with at least 5 years' continuous full-time reemployment service could make retirement fund deposit for his reemployment period and elect, in lieu of supplemental annuity, a complete annuity recomputation as though retiring for the first time.

The law thus amended, however, specifically excluded from these new provisions "an annuitant whose annuity was based upon an involuntary separation from the service." This exclusion presents no problem in respect to involuntarily separated retirees reemployed on or after October 1, 1956; under Commission regulations such retirees generally resume retirement coverage upon reemployment and may retire anew upon later separation. But until the Retirement Act was again amended October 4, 1961, any such retirees reemployed before October 1, 1956, still remained unentitled to any benefits based upon their reemployment service. This 1961 amendment extended the 5-year recomputation privilege (after deposit) to a few additional involuntarily separated retirees—those reem-

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ployed before October 1, 1956, who continued in full-time service at least to October 4, 1961, date of the enactment.

To deal with one known case of an involuntarily separated retiree who returned to serve as postmaster from June 2, 1953, to March 31, 1961, and to benefit any other similar case, H.R. 969 proposes to apply the 5-year recomputation provisions to any involuntarily separated retiree separated on or after July 12, 1960, from a period of full-time reemployment which began before October 1, 1956. Since existing law bars Retirement Act credit for part of the cited postmaster's service—from January 1, 1955, to March 31, when he was subject to social security coverage and which accords him social security benefits—the bill includes an exception to this statutory bar.

We have no precise data upon which to base an estimate of the cost involved in this bill. One specific case is at hand and possibly a few others may arise, but the total number of cases coming under the bill will be very limited, making the total cost quite small.

The net effect of this bill is to make the October 4, 1961, amendment operate retroactively from and after July 12, 1960. Generally this Commission views retroactive application of retirement law liberalizations as not in keeping with soundest practice. However, because the few cases it will affect are, from the standpoint of the retirement law, essentially on a factual par with cases which came within the 1961 amendment, the Commission offers no objection to the enactment of H.R. 969.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, JR., *Chairman.*

Mr. RUDDOCK. The Retirement Act amendment of July 12, 1960, authorized annuity recomputation for an annuitant reemployed on a full-time basis for at least 5 years, but specifically excluded the involuntary separation annuitant from its benefits. The act of October 4, 1961, extended the recomputation privilege to certain reemployed annuitants whose original retirement was involuntary, but only if separation from reemployment occurred on or after October 4, 1961.

The bill, H.R. 969, under consideration this morning, would further extend the recomputation privilege to cover involuntary separation annuitants who were separated from 5 years or more of reemployment service ending on or after July 12, 1960, the date recomputation was first provided in the Retirement Act.

This legislation originated primarily to benefit one involuntarily separated retiree who was reemployed as postmaster from June 2, 1953, to March 31, 1961. While so reemployed, he had social security coverage by virtue of the 1954 Social Security Act amendments during the period from January 1, 1955, to March 31, 1961, for which he now draws an old-age benefit, and the bill includes an exception to a provision attending the 1954 amendments to the Social Security Act which bars Retirement Act credit for that period.

We offer no objection to enactment of this legislation. The limited number of cases it will affect are essentially on a factual par with cases covered by the 1961 amendment, which legislation the Commission favored.

We are unable to estimate the cost of this proposal, but we believe the number of cases coming under the bill will be very limited, and that the total cost will be quite small.

Senator BOGGS. I don't know whether you wish, but could we go back and ask one or two questions on this bill while we are on it? Mr. Ruddock, could you tell us why the act of 1960 specifically excluded the involuntary separation annuity. Was there a reason why they specifically excluded it?

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Mr. RUDDOCK. Yes. I think the reason basically went back to the 1956 amendments. When the act was amended, effective October 1956, it provided that a person who had retired because of involuntary separation, and who was reemployed in Federal service in effect would come back under the Retirement Act as a contributing member and his subsequent rights would be determined by whatever laws were in effect at the time of his final separation; in other words, as if he had never been retired. But that applied only to the individual who was reemployed beginning on or after October 1, 1956.

For the person whose original retirement had been based on optional retirement or anything other than involuntary separation, if he was reemployed, the 1956 act provided that he would not again become a contributing member of the retirement system but if he worked in a full-time capacity for at least a year, then when he left that reemployment service his annuity would be increased by a supplement. The supplement would be equal to 2 percent of the annual salary during this period of reemployment multiplied by the years of service included in the reemployment period.

So, it intended really that the law be more generous toward the involuntarily separated retiree because his career had been interrupted for reasons beyond his control.

When the act of July 12, 1960, was passed, it had in mind particularly the voluntary retiree who had been reemployed not for just 1 year, required to earn a supplement, but who had been in a reemployed status for 5 or more years; it provided for him a recomputation. This caused, of course, no problem for the involuntary retiree whose reemployment began on or after October 1, 1956, because in effect he got a recomputation.

Then on October 4, 1961, the law was further amended so the recomputation privilege was extended to those very few involuntary annuitants whose reemployment had begun before October 1, 1956, but it was made to apply only to those separated on or after the date of that amendment, October 4, 1961.

The purpose of this bill is just to make the July 12, 1960, amendment, which first provided the recomputation privilege, available from that point forward to both the voluntary and the involuntary retiree.

Senator BOGGS. In other words you do not think that there would still exist today, in light of the developments in attitudes or feeling or reasonings in the committee or in the Congress, anything that would cause them to specifically exclude the involuntary group?

Mr. RUDDOCK. In my opinion, the exclusion was not an intention to——

Senator BOGGS. They did not make a big point of it.

Mr. RUDDOCK. No, and they did not intend to deprive the involuntary retiree of something. We just failed to recognize that he also needed this privilege.

Senator BOGGS. Thank you.

Mr. RUDDOCK. The third bill, H.R. 1746, is a Commission-sponsored proposal. In its letter of March 1, 1965, to the chairman of the full committee, the Commission explained in some detail the need for legislation to define the term "child," to include an illegitimate child, for lump-sum benefit purposes under the Civil Service Retirement Act. I ask that the Commission's March 1 letter be made a part of the record.

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Senator McGEE. It will be included without objection.
(The letter referred to follows:)

CIVIL SERVICE COMMISSION,
Washington, D.C., March 1, 1965.

Hon. OLIN D. JOHNSTON,
Chairman, Committee on Post Office and Civil Service,
U.S. Senate.

DEAR MR. CHAIRMAN: This refers to your request of February 22, 1965, for Commission report on H.R. 1746, a bill to define the term "child" for lump-sum payment purposes under the Civil Service Retirement Act.

H.R. 1746 embodies legislation officially recommended by the Commission in the 87th and 88th Congresses. Our submission to the 88th Congress resulted in the introduction of H.R. 3612 and S. 618. Public hearing was held March 26, 1963, on H.R. 3612 by the House Committee on Post Office and Civil Service. Shortly thereafter the bill was reported (H. Rept. 193, dated April 4, 1963) to the House of Representatives and was passed by that body on April 22, 1963. The legislation did not progress in the Senate, however, and failed of enactment.

H.R. 1746, which is identical to H.R. 3612 of the 88th Congress, proposes a clarifying amendment to the Retirement Act definition of "child" which is still needed. An explanation of the basis for this need follows.

Prior to 1955, the provisions of the Civil Service Retirement Act authorizing benefits to a child were interpreted by the Commission to include only a legitimate child as that term is used generally in the laws of domestic relations and statutes of descent and distribution. Survivor annuity benefits, and also lump-sum death benefits were denied a child if evidence showed him to be illegitimate. This construction of the law was in line with court decisions on similar statutory provisions affecting social security benefits and pay and allowances of officers in the uniformed services.

However, in 1955, in a case arising in Missouri (*Visor* v. *United States*, unreported, decided February 28, 1955), the U.S. District Court for the Eastern District of Missouri held that since the Retirement Act did not specifically exclude illegitimate children, they should be viewed as included.

The Commission accepted and applied this principle for survivor annuity and for lump-sum retirement payments. When reenacting the Civil Service Retirement Act in its entirety in 1956, Congress with Commission concurrence limited survivor annuity in this area to a "recognized natural child who received more than one-half of his support from and lived with the member or employee in a regular parent-child relationship" (5 U.S.C. 2251(j)). This had the effect of restricting the *Visor* holding to illegitimates as described and denying survivor annuity to those beyond that scope.

The 1956 definition does not extend to lump-sum death payments under the Retirement Act, which payments are due only if no survivor annuity is payable or if all survivor annuities terminate before the amount to the deceased employee's credit in the retirement fund is exhausted. Although the act does not presently define "child" for lump-sum benefit purposes, the Commission has since 1955 consistently followed the holding of the district court in the *Visor* case and does not withhold lump-sum benefits from illegitimate children.

Because the Retirement Act is silent as to its intention we are urged by claimants and their attorneys to disregard the court decision and not view it as a precedent in States where illegitimates are not entitled to inherit or are recognized as having rights inferior to those of legitimate children. A desire to have a uniform practice and consistent rule for all Federal employees, and to avoid misunderstandings, appeals from decisions, and litigation in the limited number of affected cases prompted the Commission to seek legislation to statutorily define "child" for lump-sum benefit purposes as specifically including illegitimate children. Since adult children generally are involved in lump-sum cases, the half-support and living-with requirements applicable to survivor annuity situations are omitted from the lump-sum benefit definition as unnecessary.

H.R. 1746 proposes precisely the amendatory legislation previously recommended by the Commission and we urge that the bill be enacted into law. Enactment of the bill will involve no Government cost, but will produce an administrative saving by the elimination of disputes, appeals, and litigation in the adjudication of lump-sum death benefit claims.

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In connection with our report to the House Committee on Post Office and Civil Service on this bill, the Bureau of the Budget advised that there would be no objection to the submission of this report to the committee.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

Mr. RUDDOCK. Favorable consideration of this legislation by your committee, with ultimate Senate approval, would greatly aid the Commission in the adjudication of lump-sum death benefit claims under the Retirement Act, by statutorily approving the administrative ruling which we have adopted and applied in this area since 1955.

Until 1955, the provisions of the Civil Service Retirement Act affording benefits to a child were interpreted by the Commission to include only a legitimate child as that term is used generally in the laws of domestic relations and statutes of descent and distribution. Survivor annuity benefits, and also lump-sum benefits, were denied a child if evidence showed him to be illegitimate.

This construction of the law was in line with court decisions on similar statutory provisions affecting social security benefits and pay and allowances of officers in the uniformed services.

In 1955, in a case arising in Missouri, the U.S. District Court for the Eastern District of Missouri decided that since the Retirement Act did not specifically exclude illegitimate children, they should be viewed as included. Shortly thereafter, the 1956 Retirement Act definition of "child" for survivor annuity purposes adopted the principle of the court's decision, but provided survivor annuity benefits to a recognized natural child only if he received more than half his support from, and lived in a regular parent-child relationship with, the parent who was the Federal employee.

Although the act does not presently define "child" for lump-sum death benefit purposes, the Commission has since 1955 consistently followed the holding of the district court and does not withhold lump-sum death benefits from illegitimate children.

Because the Retirement Act is silent as to its intention, we are urged by some claimants and attorneys to disregard the court decision, and by others to view it as a precedent. This is particularly so in States where illegitimates are not entitled to inherit or are recognized as having rights inferior to those of legitimate children. The Commission's desire to have a uniform practice and a consistent rule for all Federal employees, and to avoid misunderstandings, appeals from decisions, and litigation in the limited number of affected cases, has prompted our initiation of this legislative proposal. I again urge favorable consideration of H.R. 1746 by this committee.

This concludes my prepared statement. I would like to thank the chairman and the members of the committee for the time accorded me to express the Commission's views on these three bills. I will be pleased to answer any questions.

Senator MCGEE. I have one question, Mr. Ruddock. In the bill involving the District, what effect would that measure have on the future annuity privileges of an annuity?

Mr. RUDDOCK. It would affect the annuity only if at the time of retirement the individual was indebted to the District of Columbia government, the government had exhausted all other means of recovery, and then asked us to recover by setoff from retirement funds.

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In that case we would make a collection from the annuity. We would try to make that collection in the way that it would be, not a hardship to the former employee.

We would try to make the collection over a period of time so that he would not be deprived of receipt of his annuity for any given period.

Senator McGEE. This would not affect the future annuity that he might become entitled to?

Mr. RUDDOCK. It would not affect his annuity rate; no, sir. The setoff would be made only at such time as there is an amount payable to him from the retirement fund.

Senator McGEE. It would not affect any other separate annuity funds that he might be entitled to in new employment.

Mr. RUDDOCK. As long as he was indebted to the District of Columbia government and they had requested us to recover by setoff, we would attempt to, and we would make collection from any money payable to him from the retirement fund.

Senator McGEE. From the District retirement fund?

Mr. RUDDOCK. It is all in one retirement fund, the civil service retirement fund.

Senator McGEE. You have answered that. My question had to do with any future employment he might have that had nothing to do with the District or the retirement fund of which the District is a part; you would have no access to any future annuities that he might build up?

Mr. RUDDOCK. We would have access to it if this resulted in money payable to him from the retirement fund. Let me illustrate. Let us say he worked for the District of Columbia government and at the time he left employment in the District of Columbia government he owed them $200 for whatever legitimate reason.

Let us say he goes to work immediately in the Department of Agriculture (which is part of the Federal Government) and works there for the next 10 years. While he is working and is a contributing member of the retirement fund, there would be no way we could make any setoff or recovery on that indebtedness because there is nothing payable to him from the retirement fund.

Now, during that 10-year period the District of Columbia government would have a continuing responsibility to exert every reasonable effort to make the collection directly from the man without recourse to the retirement fund.

Let us carry the example further. Let us say he is retired from service after this 10 years with the Department of Agriculture and he still owes money to the District of Columbia government and they have asked us to recover by setoff. Then we would recover that debt from annuity payable to him out of the civil service retirement fund and the annuity would be based on both his District of Columbia government and his Federal Government service.

Senator McGEE. Senator Boggs?

Senator BOGGS. Thank you, Mr. Chairman.

I think I understand this, Mr. Ruddock, but you say it already applies to all the rest of the Federal Government?

Mr. RUDDOCK. Yes.

Senator BOGGS. It only applies to the Government, no private vendor that had a claim could come in?

Mr. RUDDOCK. No, sir.

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Senator BOGGS. Now, suppose there is a question as to whether or not the claim was a proper claim. Does it have to be adjudicated by somebody as a proper claim before it acts as a setoff?

Mr. RUDDOCK. Yes; it would be adjudicated originally by the creditor agency. In the case we are talking about this morning, it would be the District of Columbia government. If the District of Columbia government, having adjudicated that, decides it is a legitimate debt and asks us to recover, then we do not assume a function of determining either the validity of the debt or the amount, but we would proceed to make the recovery.

We would advise the individual that he may take up his question either as to validity or amount with the District of Columbia government and if he is not satisfied with their answer he may take it to the Comptroller General of the United States for final determination.

Now if he takes it to the Comptroller General and is not satisfied with that answer, he still has a recourse to the court.

Senator BOGGS. I do not know what the experience has been or how often this has happened. I am just thinking of one case some time ago I recall. It did not have to do with the District of Columbia, but the Government was trying to collect from somebody and the guy claimed that he did not think he owed it properly. So the creditor agency is the judge and jury and everything in deciding whether he should pay that.

Would it not be a protection that if the creditor agency, bureau, or whatever, of the District of Columbia had a claim against somebody and after pursuing it with him personally the man denied it, then they should have to take it to some proper court, and get a judgment on the thing and then submit that under this procedure and proceed, rather than throw the burden on the individual, to go to the Comptroller General's office, who is pretty busy.

I suppose that might take many—how much time would it take? It might take a long time.

Mr. RUDDOCK. It might take a long time.

Senator BOGGS. And if he was not successful there he would have to go to a court to protect his rights, it seems to me.

Mr. RUDDOCK. In my experience in the vast majority of these claims there is no dispute as to either the validity or the amount. The claims arise—I guess the primary reason is overpayment of salary which would include overdrawn leave.

Probably the second would be failure to pay taxes.

Senator BOGGS. Failure to pay taxes; then under the law that amounts to more or less a lien anyway.

Mr. RUDDOCK. That is a debt to the District of Columbia government or the Federal Government as the case may be.

A third reason—I don't know if this would be next in order—would be advancs which are made to an individual who has to travel and where his expenses do not come up to the advances and he leaves employment at a time when he has not repaid all of the advances.

There is one type which is in the minority, but we do get them occasionally. This would not affect the District of Columbia government, but this would be an individual who has defaulted on an FHA loan, where there is an indebtedness to FHA, and where we would recover generally in small amounts over a long period of time from the annuity.

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Senator BOGGS. As it applies now in the Federal Government generally, it amounts to a lien.

Mr. RUDDOCK. I believe the right of setoff goes back to the old principle of the right of the sovereign to set off against any amounts due a claimant, any amount that the claimant owes him. So far as the Federal Government is concerned the right is an inherent right as has been so determined, rather than being one granted by statute.

Now this particular legislation, in addition to making that right available to the District of Columbia government, would also put into the statute the inherent sovereign right of the Federal Government to effect setoff.

Senator BOGGS. What you are asking for here is absolutely no different than what already exists in all the rest of the Federal Government?

Mr. RUDDOCK. So far as the Federal Government is concerned there would be no change and it would be the same practice followed in the District of Columbia government from 1920 until 1955. We have not been following it since the decision in the case of *Sedgewick* v. *Young*.

Senator BOGGS. Is there much of this?

Mr. RUDDOCK. I looked into that before a hearing on the House side on this legislation, and at that time we estimated that we have about 3,000 requests for recovery in the course of a year and that they average about $200 per claim, although some of them would be naturally larger and some would be smaller.

Our primary retirement mission is one of paying the benefits of the Retirement Act, not being a collection agency, so we do require the creditor agency to certify that they have exhausted all other reasonable means of effecting recovery.

We do not accept a claim for an amount less than $5 because we could easily end up with the collection costs exceeding the indebtedness. We do not accept a claim for a person who is currently employed because there certainly is a better means of recovering in that case than by waiting until he retires and then trying to take it from his annuity.

Mr. MINTON. If an employee works for the District or Federal Government for 5 years and accrues the right to a future annuity, then leaves the Government and goes into private industry with that right to future annuity, and he owes the District of Columbia government an amount of money equal to his deposits in the fund, what happens if the government of the District of Columbia comes to the Commission and asks for payment?

Mr. RUDDOCK. In the case you cited, we would advise the District of Columbia government that this individual has title to a deferred annuity that it is not yet payable; that we are making a note of their claim, that if, as, and when the individual reaches a point that he is eligible for this annuity, if this indebtedness still exists we will collect it at that time.

But we would not make collection by setoff against his account at a time when it is not payable.

Mr. MINTON. And if that debt is satisfied from the fund at that future time, he will still receive his annuity after the debt itself is satisfied?

Mr. RUDDOCK. Yes, indeed. Carrying that example one step further, if before he reached the point of eligibility for the annuity, if he filed an application for refund saying, "I have decided not to

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wait for the annuity. Just give me my own account," we would recover the debt at that point and send him the balance.

Mr. MINTON. Thank you.

Senator MCGEE. With this many cases, roughly 3,000 cases, what is the total Federal employment in the District?

Mr. RUDDOCK. Somewhere in the neighborhood of 200,000, but the 3,000 is the estimate for the total Federal Government. The estimate I believe that will come as debts to the District of Columbia government would be about 200 a year.

Senator MCGEE. Instead of 3,000 the real figure would be 200 as far as the District is concerned?

Mr. RUDDOCK. That is right. Three thousand would be the figure for the whole Government.

Mr. MINTON. Would this authority be retroactive to 1955?

Mr. RUDDOCK. No, sir.

Mr. MINTON. It would take effect as of the date of enactment?

Mr. RUDDOCK. It would affect only collections from amounts payable from and after date of enactment to people who are indebted to the District of Columbia government.

Senator MCGEE. In these several cases referred to, are there general "old college tries" made at collecting these funds through established procedures, or is this a convenience that would be set up as a substitute for working at it?

Mr. RUDDOCK. No, I don't think it is a convenience anymore, Mr. Chairman. I think it was at one time. I think we were—if I may use the term "used." I might even say abused, because I think at one time an agency thought it was much simpler for them to do nothing about an overpayment of salary or if the man has not turned in his locker keys, and they would just file a claim against his retirement account. But we have worked out these procedures so we can make collections which are reasonable and do it at reasonable cost.

The claim coming from the agency must include a certification that all other reasonable means of recovery have been exhausted, and I think that is pretty conscientiously followed.

Senator MCGEE. Does interest run on the debt?

Mr. RUDDOCK. It does not run on the debt with us. Interest may run on certain types of indebtedness, but the agency——

Senator MCGEE. Like taxes?

Mr. RUDDOCK. The agency would file a claim with us saying, "Would you collect so much," and that is the amount we would collect. If they said, "Will you please collect so much plus interest accruing at such and such a rate until the date you collect," we don't take that responsibility. We ask for a request for a specific amount.

Mr. PASCHAL. Mr. Ruddock, in the line of questioning with Senator Boggs, did I understand you to say that a Federal employee might be in arrears with his taxes on real estate, he might own a home within the District, and if he had back taxes, would that be a legitimate claim for the District of Columbia against this employee with the Civil Service Commission?

Mr. RUDDOCK. Yes, sir.

Mr. PASCHAL. Does the District of Columbia already have the authority, like other cities, to go through the courts on back taxes?

Mr. RUDDOCK. I am not sure I know the answer to that.

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Mr. PASCHAL. What we were wondering is why they need to take these claims to the Civil Service Commission rather than the court?

Mr. RUDDOCK. I cannot answer that. There would be no requirement that they bring it to us.

Senator MCGEE. There are no more questions.

Thank you, Mr. Ruddock, for helping us clarify the terms of these three bills.

Mr. RUDDOCK. Thank you, Mr. Chairman.

Senator MCGEE. Before proceeding to the next witness, I would like to acknowledge the presence here of students from Milwaukee University School. I mentioned that particularly because, as a professor for so many years and so far west that you could not get to Washington with your class, I think this is an enviable opportunity, particularly if you come into a little old hearing like this, which is not quite as jazzy as something on TV. This is where the real work is done. This committee's session this morning is multiplied dozens of places all over the Hill at this very moment, and this is where the real effort is made to try to turn out sound legislation.

You go over to the floor of either the House or Senate and you would be surprised to find more than three or four Senators there. If you have been there, you have witnessed this. The reason is they are over here working at precisely this kind of operation.

So I think it is wonderful that you take the time—under whatever guise—to get back here and participate in this laboratory of democracy. We want to say it is nice having you here this morning.

The next witness is Mr. William A. Robinson, Assistant Corporation Counsel of the District of Columbia government.

You have with you Mr. Farber and Mr. Kidd, is that correct?

STATEMENT OF WILLIAM A. ROBINSON, ASSISTANT CORPORATION COUNSEL, DISTRICT OF COLUMBIA GOVERNMENT; ACCOMPANIED BY BARNEY FARBER, CHIEF OF THE ACCOUNTING DIVISION

Mr. ROBINSON. Mr. Kidd is not here. Mr. Farber will be available for any questions.

Senator MCGEE. May I suggest to you that you might concentrate your testimony. First, we will present your prepared statement, if you have one, as though it were delivered and if you have any differences to suggest to the committee to Mr. Ruddock's comments, those will be more germane to our deliberations.

Mr. ROBINSON. I think Mr. Ruddock has very ably covered the subject matter, but, nevertheless, we are pleased to appear here on behalf of the Commission of the District of Columbia to present their views on H.R. 158.

In their report on H.R. 158, dated March 18, 1965, addressed to the chairman of the Committee on Post Office and Civil Service, the Commissioners recommended favorable action on the bill, the purpose of which is to provide specific authority for the Government to set off annuity payments, or refunds, payable to former employees from the civil service retirement fund in order to liquidate debts owed the Government by such former employees of the Federal or District Governments.

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The term "government" is defined by section 1(k) of the Civil Service Retirement Act to include the municipal government of the District of Columbia. Therefore, the bill, among other things, places the District on a par with the Federal Government with respect to liquidating debts owed it by former employees.

Legislation similar to H.R. 158 was introduced in the 88th Congress at the request of the Commissioners in an attempt to restore to the District government rights with respect to setoffs which it had enjoyed for over 30 years.

In 1956, the Comptroller General ruled in 36 Comp. Gen. 457, a decision based in part upon the 1955 case of *Sedgwick* v. *Young*, that the Civil Service Commission could no longer honor claims by the District of Columbia for setoff of moneys in the retirement fund in liquidation of debts due the District of Columbia government.

Since that time the District has been unable to press claims against money due former employees from the retirement fund in order to satisfy any indebtedness to the District government.

In order to rectify this situation, the Commissioners request favorable action by this committee and Senate on H.R. 158.

I will be glad to answer any questions. Those of a technical nature Mr. Farber, who is our accounting officer, will be in a position to answer.

Senator McGEE. I think, in view of your position on the bill, that we do not need to double track on the questions that we have already raised with Mr. Ruddock and there will be no questions.

We thank you very much for taking your time.

The next witness will be John Griner, president of the American Federation of Government Employees.

STATEMENT OF THOMAS G. WALTERS, SPECIAL ASSISTANT FOR LEGISLATION, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. WALTERS. Mr. Chairman, Mr. Griner is unavoidably absent this morning.

As his representative, for the record, my name is Thomas G. Walters, special assistant to the president for legislation. I would like to reecho the opening remarks that you referred to as these bills being housekeeping measures.

We certainly subscribe to that philosophy and therefore we endorse the intent of these three bills. I would like for the record to show that the average number of people retiring each year is somewhere around 60,000. Now, I understand from Mr. Ruddock that in 1965, due to the so-called Daniels bill, that approximately 85,000 people retired and, of course, that, percentagewise, proves beyond any doubt that the number of people involved is very, very small in the so-called debt recovery proposition.

With that explanation, we express our thanks and appreciation for the privilege of appearing and, as I stated yesterday before a subcommittee in this room, the honeymoon between the AFGE and the Civil Service Commission is being continued.

Senator McGEE. That is the proper point for the chairman to go away.

You have no formal statement to be included in the record?

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Mr. WALTERS. No.

Senator McGEE. Thank you.

The next witness, Mr. Nathan Wolkomir, president, National Federation of Federal Employees.

STATEMENT OF EARL FINNIGAN, ON BEHALF OF NATHAN T. WOLKOMIR, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. FINNIGAN. My name is Earl Finnigan. Mr. Wolkomir was unable to be present and asked me to appear for him. We have a statement which has already been given to you.

Senator McGEE. Yes, sir, this statement will be filed in toto as though you had delivered it, and if you have any differences to point up here that have been touched upon, you may do so.

(The document referred to follows:)

STATEMENT OF NATHAN T. WOLKOMIR, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

My name is Nathan T. Wolkomir. I am president of the National Federation of Federal Employees. Our organization has a long record of interest in and support of constructive retirement legislation, going back to the original Retirement Act of 1920, the enactment of which was a major objective of the NFFE when our organization was founded back in 1917.

The subcommittee is addressing itself at this time to three measures affecting the Federal retirement system which were passed by the House of Representatives last year but have not yet been acted upon by the Senate.

With respect to H.R. 969 and H.R. 1746, the NFFE believes that a favorable report on these measures, as they stand, is in order.

H.R. 1746 makes a clarification in the definition of "child" under the Civil Service Retirement Act for purposes of lump-sum payment upon the death of the annuitant. We, however, question the "stepchild" restriction. Should not State intestacy laws be considered and therein be governed.

H.R. 969 is designed to correct an inequity in the Civil Service Retirement Act by expanding the application of an amendment that resulted in being unreasonably restrictive and thereby cover a few additional cases which are essentially on a factual par with cases covered by the amendment. Because of the inequities which have resulted, this legislation should promptly pass.

As the House Committee Report No. 1035, dated September 20, 1965, on this bill points out, the Civil Service Retirement Act was amended on July 12, 1960, to permit a reemployed annuitant separating on or after that date to have his entire annuity recomputed under existing law if (1) his original retirement was based upon a voluntary separation; and (2) he had at least 5 years of continuous full-time reemployment service; and (3) deposit was made for the period of reemployment.

Subsequently, the law was amended to permit recomputation of bentfits under the same conditions to a reemployed annuitant separated on or after October 4, 1961, but whose original retirement was based upon an involuntary separation. Whereas the equity of recomputation was realized in the amendments of July 12, 1960, and October 4, 1961, the committee pointed out that an inequity remained in those cases of involuntary retirees whose reemployment terminated between these dates. The language of the present legislatuion effectually removes that inequity.

Mr. Chairman, while we support the passage of H.R. 1746 and H.R. 969 in their present form, we cannot support H.R. 158 as it presently is written.

H.R. 158 would amend the Civil Service Retirement Act to permit all agencies subject to the act to use the retirement fund moneys as a source for the payment of an obligation the employee may owe the Government.

For some time the General Accounting Office has held that the executive branch had the authority to effect counterclaims against retirement fund moneys, but the District of Columbia government and Gallaudet College were denied this means of collecting moneys owed them. This bill was first introduced in 1962

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at the request of the District of Columbia government. It would give legislative authorization for the effecting of counterclaims by the executive branch, the District of Columbia government, and Gallaudet College. The NFFE is against any prerogative, including the GAO authority, to infringe on the retirement funds. This is adverse to a "senior citizens" concept of being.

However, rather than violating the integrity of the retirement fund, the committee should perhaps direct itself to such encroachments as—

1. State and Federal inheritance taxes: We call to the committee's attention H.R. 11438, introduced by Representative Love of Ohio. This bill would prevent State and municipalities from collecting inheritance taxes on Federal retirement annuities.

In addition, we call the committee's attention to attachment 1, a letter to Congressman Daniels, which states that the Wisconsin Supreme Court has ruled that annuities would be exempt.

2. We are also attaching hereto as attachment 2 our testimony to the Cabinet Committee on Federal Staff Retirement Systems. This committee was to have reported as of December 1, 1965, and to date we are still awaiting this report.

Grave consideration should be given to the constructive recommendations made.

With the above considerations and amendments in mind, we urge a favorable report on H.R. 969 and H.R. 1746. We appreciate your courtesies and the opportunity of appearing today.

Mr. FINNIGAN. The only thing I would like to do is emphasize that we urge H.R. 158 not to be enacted for the reasons that have been touched on here, namely we do not think there has been sufficient effort made on the part of the agency to collect.

Senator MCGEE. Through the normal channels?

Mr. FINNIGAN. That is right, and we think also the burden should be on the agency rather than on the employer. So that is the gist of our remarks.

Senator MCGEE. That is understandable; and that is in your statement?

Mr. FINNIGAN. Yes, sir.

Senator MCGEE. It is a very small percentage of the total claims. The committee will weigh the two positions which are in juxtaposition.

Thank you very much.

The committee will keep the record open for 5 days for any additional statements that in hindsight or further reflection might seem to be in order.

With that understanding the Subcommittee on Retirement will adjourn.

(Whereupon, at 11 a.m. the subcommittee adjourned.)

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